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§ 1726.17 Restrictions on lobbying.

Borrowers are required to comply with certain restrictions and requirements in connection with procurement activities as set forth in part 3018 of this title.

§ 1726.18 Preloan contracting.

Borrowers must consult with RUS prior to entering into any contract for material, equipment, or construction if a construction work plan, general funds, loan or loan guarantee for the proposed work has not been approved. While the RUS staff will work with the borrower in such circumstances, nothing contained in this part is to be construed as authorizing borrowers to enter into any contract before the availability of funds has been ascertained by the borrower and all the requirements of part 1794 of this chapter, Environmental Policies and Procedures for Electric and Telephone Borrowers, have been fulfilled.

§ 1726.19 Use of competitive procurement.

RUS borrowers' procurement is not subject to the provisions of the Federal Acquisition Regulation (48 CFR chapter 1); however, since borrowers receive the benefit of Federal financial assistance borrowers must use competitive procurement to the greatest extent practical. The borrower must use competitive procurement for obtaining all goods or services when a RUS loan or loan guarantee is involved except:

- (a) As specifically provided for in subparts B through F of this part; or
- (b) A waiver is granted.

§ 1726.20 Standards and specifications.

All materials, equipment, and construction must meet the minimum requirements of all applicable RUS standards and specifications. (See part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction, which is applicable regardless of the source of funding.)

[69 FR 7109, Feb. 13, 2004]

§ 1726.21 New materials.

The borrower shall purchase only new materials and equipment unless

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otherwise approved by RUS, on a case by case basis, prior to the purchase.

§ 1726.22 Methods of construction.

The borrower is generally responsible for determining whether construction will be by contract or force account. If construction is by contract, the borrower must determine whether materials will be supplied by the contractor or will be furnished by the borrower. RUS reserves the right to require contract construction in lieu of force account construction on a case by case basis.

§ 1726.23 Qualification of bidders.

(a) *Qualified bidder list (QBL).* The borrower shall (acting through its engineer, if applicable) review the qualifications of prospective bidders for contract construction and for material and equipment procurement, and select firms qualified for inclusion on the borrower's list of qualified bidders for each contract. (See also § 1726.16 and § 1726.17.) A bid may not be solicited from a prospective bidder or opened by the borrower unless that bidder has been determined to be a qualified bidder for the contract. When preparing the QBL, in addition to the actual experience of the borrower, if any, in dealing with a prospective bidder, the borrower may solicit information from that bidder or from other parties with firsthand experience regarding the firm's capabilities and experience. It is also important to consider the firm's performance record, safety record, and similar factors in determining whether to include that firm on the QBL, since the borrower may not evaluate these factors when evaluating a bid from a qualified and invited bidder.

(b) *Conflict of interest.* If there is a relationship between the borrower or engineer and a prospective bidder which might cause the borrower or engineer to have or appear to have a conflict of interest, that prospective bidder shall not be included on the QBL unless the engineer discloses the nature of the relationship to the borrower. In the case of the borrower, if its employees or directors have a relationship with a prospective bidder, the prospective bidder shall not be included on the qualified

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bidders list unless the nature of the relationship is disclosed to the board of directors, and the board of directors specifically approves the inclusion of that bidder in light of the potential for a conflict of interest.

§ 1726.24 Standard forms of contracts for borrowers.

(a) *General.* The standard loan agreement between RUS and the borrowers provides that, in accordance with applicable RUS regulations in this chapter, the borrower shall use standard forms of contracts promulgated by RUS for construction, procurement, engineering services, and architectural services financed by a loan made or guaranteed by RUS. This part implements these provisions of the RUS loan agreement. Subparts A through H and J of this part prescribe when and how borrowers are required to use RUS standard forms of contracts in procurement and construction. Subpart I of this part prescribes the procedures that RUS follows in promulgating standard contract forms and identifies those contract forms that borrowers are required to use for procurement and construction.

(b) *Amendments to contracts—(1) Contract forms.* The borrower must use RUS Form 238, Construction or Equipment Contract Amendment, for any change or addition in any contract for construction or equipment.

(2) *Special considerations.* Each time an amendment to a construction contract is executed, the borrower must ensure that contractor's bond is adequate, that all necessary licenses and permits have been obtained, and that any environmental requirements associated with the proposed construction have been met.

(3) *Amendment approval requirements.* (i) If a RUS approved form of contract is required by this part, an amendment must not alter the terms and conditions of the RUS approved form of contract without prior RUS approval.

(ii) The borrower must make a contract amendment subject to RUS approval if the underlying contract was made subject to RUS approval and the total amended contract price exceeds 120 percent of the original contract

price (excluding any escalation provision contained in the contract).

(iii) Contract amendments, except as provided in paragraph (b)(3)(ii) of this section, are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

[60 FR 10155, Feb. 23, 1995, as amended at 63 FR 58286, Oct. 30, 1998; 69 FR 7109, Feb. 13, 2004]

§ 1726.25 Subcontracts.

Subcontracts are not subject to RUS approval and need not be submitted to RUS unless specifically requested by RUS on a case by case basis.

[69 FR 7109, Feb. 13, 2004]

§ 1726.26 Interest on overdue accounts.

Certain RUS contract forms contain a provision concerning payment of interest on overdue accounts. Prior to issuing the invitation to bidders, the borrower must insert an interest rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued. If no prime rate is published on that date, the last such rate published prior to that date must be used. The rate must not, however, exceed the maximum rate allowed by any applicable state law.

[63 FR 58286, Oct. 30, 1998]

§ 1726.27 Contractor's bonds.

(a) RUS Form 168b, Contractor's Bond, shall be used when a contractor's bond is required by RUS Forms 200, 257, 786, 790, or 830 unless the contractor's surety has accepted a Small Business Administration guarantee and the contract is for \$1 million or less.

(b) RUS Form 168c, Contractor's Bond, shall be used when a contractor's bond is required by RUS Forms 200, 257, 786, 790, or 830 and the contractor's surety has accepted a Small Business Administration guarantee and the contract is for \$1 million or less.

(c) Surety companies providing contractor's bonds shall be listed as acceptable sureties in the U.S. Department of the Treasury Circular No. 570,